

FILED

APR 09 2013

**Board of Vocational Nursing
and Psychiatric Technicians**

KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General
LESLIE A. BURGERMYER
Deputy Attorney General
State Bar No. 117576
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5337
Facsimile: (916) 327-8643
Attorneys for Complainant

**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2011-155

DIANE KIM GREEN
5415 S. Grove Street, Apt. 57
Rocklin, CA 95677

A C C U S A T I O N

Vocational Nurse License No. VN 128395

Respondent.

Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs.

2. On or about September 11, 1985, the Board issued Vocational Nurse License Number VN 128395 to Diane Kim Green ("Respondent"). The license is inactive and expired on November 30, 2012.

///

///

///

STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 2875 provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

4. Code section 118(b) provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under Code section 2892.1, the Board may renew an expired license at any time within four years after the expiration.

5. Code section 2878 states, in pertinent part:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for the following:

(a) Unprofessional conduct....

(b) Procuring a certificate by fraud, misrepresentation, or mistake.

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

6. Code section 2878.5 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof.

///

///

1 7. Code section 4022 states, in pertinent part:

2 “Dangerous drug” . . . means any drug . . . unsafe for self-use in
3 humans or animals, and includes the following:

4 (a) Any drug that bears the legend: “Caution: federal law prohibits
dispensing without prescription,” “Rx only,” or words of similar import.

5 (c) Any other drug . . . that by federal or state law can be lawfully
6 dispensed only on prescription or furnished pursuant to Section 4006.

7 **DRUGS**

8 8. **Ambien** is a brand of Zolpidem Tartrate, and a Schedule IV controlled substance as
9 designated by Health and Safety Code section 11057.

10 9. **Cogentin** is generic Benztropine and is a dangerous drug within the meaning of Code
11 section 4022 in that it requires a prescription under federal law.

12 10. **Klonopin**, a brand name for Clonazepam, a Benzodiazepine, is a Schedule IV
13 controlled substance as designated by Health and Safety Code section 11057, subdivision (d).

14 11. **Seroquel** is a dangerous drug within the meaning of Code section 4022 in that it
15 requires a prescription under federal law.

16 12. **Vicodin** is a compound consisting of 5 mg Hydrocodone Bitartrate also known as
17 Dihydrocodeinone, a Schedule III controlled substance as designated by Health and Safety Code
18 section 11056, subdivision (e)(4), and 500 mg acetaminophen per tablet.

19 **COST RECOVERY**

20 13. Code section 125.3 provides, in pertinent part, that the Board may request the
21 administrative law judge to direct a licentiate found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Conviction of Crimes)**

26 14. Respondent is subject to discipline under Code section 2878(f), in that on or about
27 January 27, 2009, in the case of *People v. Diane Kim Green*, (Super. Ct. Placer County, 2008,
28 Case No. 62-85084), Respondent was convicted by the Court on her plea of nolo contendere of

1 violating Vehicle Code section 23152(a) (drove a motor vehicle while under the influence of
2 drugs and/or alcohol), a misdemeanor. The crime is substantially related to the qualifications,
3 functions or duties of a licensed vocational nurse.

4 a. The underlying circumstances of the crime are: On or about October 4, 2008, a
5 Rocklin Police Department officer observed Respondent driving her vehicle on a public road
6 including drifting from lane to lane, straddling lanes, at approximately 20 mph in a 35 mph zone.
7 After stopping Respondent, the officer observed she had bloodshot watery eyes, extremely slow
8 and slurred speech, slack facial muscles, and an odor of an alcoholic beverage on or about her
9 person. The officer also noticed that Respondent moved extremely slow and had trouble
10 maintaining her balance when she exited her vehicle, and seemed confused and disoriented.
11 Respondent admitted she had drank an alcoholic beverage within one hour prior to driving and
12 had taken her "night time pills," which may have included Ambien; she could not remember if
13 she had taken Ambien. Respondent was unable to complete the Field Sobriety Tests. Based upon
14 Respondent's objective signs and symptoms of intoxication and poor performance on the tests,
15 the officer formed the belief that Respondent operated a vehicle while under the influence of
16 alcohol and drugs, and arrested her. At the jail, the officer searched Respondent's purse and
17 observed five pills which were identified by the jail nurse as Vicodin, Klonopin, Seroquel, and
18 Cogentin. Respondent's BAC measured .09%.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Use of Alcohol)**

21 15. Respondent is subject to discipline under Code section 2878, subdivision (a), on
22 the grounds of unprofessional conduct as defined in Code section 2878.5, subdivision (b), in that
23 on or about October 4, 2008, Respondent used alcohol to an extent or in a manner dangerous or
24 injurious to herself, and the public, when she operated a motor vehicle while under the influence
25 of alcohol, as more particularly set forth above in paragraph 14, above, incorporated herein by
26 reference.

27 ///

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Conviction Involving the Consumption of Alcohol)**

3 16. Respondent is subject to discipline under Code section 2878, subdivision (a), on
4 the grounds of unprofessional conduct as defined in Code section 2878.5, subdivision (c), in that
5 on or about January 27, 2009, Respondent was convicted by the Court on her plea of nolo
6 contendere of violating Vehicle Code section 23152, subdivision (a) (drove a motor vehicle while
7 under the influence of alcohol and/or drugs), as more particularly set forth above in paragraph 14,
8 above, incorporated herein by reference.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Procuring License by Fraud, Misrepresentation, or Mistake)**

11 17. Respondent is subject to discipline under Code section 2878, subdivision (b), in
12 that on or about November 18, 2010, Respondent procured her license by fraud,
13 misrepresentation, or mistake, in that Respondent signed the Application for Renewal of License,
14 under penalty of perjury, and answered "No" to question number 11 that stated:

15 "Since your last renewal, have you had any license disciplined by a
16 government agency or been convicted or pled guilty to any crime?"

17 Respondent failed to disclose her conviction of January 27, 2009, set forth above in
18 paragraph 14, above, incorporated herein by reference.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Dishonest Acts)**

21 18. Respondent is subject to discipline under Code section 2878, subdivision (j), in
22 that Respondent committed dishonest acts by failing to disclose her conviction of January 27,
23 2009, set forth above in paragraph 14, above, incorporated herein by reference, on her application
24 for renewal dated November 18, 2010.

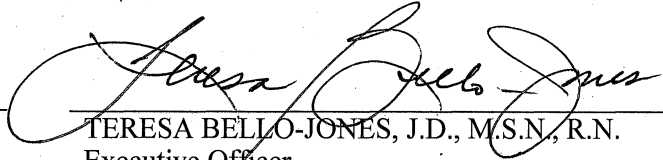
25 **PRAYER**

26 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Director of Consumer Affairs issue a decision:
28

- 1 1. Revoking or suspending Vocational Nurse License Number VN 128395, issued to
- 2 Diane Kim Green;
- 3 2. Ordering Diane Kim Green to pay the Bureau of Vocational Nursing and Psychiatric
- 4 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to
- 5 Code section 125.3; and,
- 6 3. Taking such other and further action as deemed necessary and proper.

7
8 DATED: _____

APR 09 2013



TERESA BELLO-JONES, J.D., M.S.N., R.N.

Executive Officer

Board of Vocational Nursing and Psychiatric Technicians

Department of Consumer Affairs

State of California

Complainant

9
10
11
12
13 SA2012105731
14 11050875.docx